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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/923,697	08/07/2001	Barry D. Olson	CN-0102	1564

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WILMINGTON, DE 19805

EXAMINER

SIMONE, CATHERINE A

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 02/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

AS-5

**Office Action Summary**

Application No.

09/923,697

Applicant(s)

OLSON ET AL.

Examiner

Catherine Simone

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on December 17, 2002.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All   b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 1, 2 and 4-9** are rejected under 35 U.S.C. 102(b) as being anticipated by Barnett (5,820,799).

Barnett discloses a decorative material having geometric patterns on a surface (Fig. 2) thereof the geometric patterns are formed from at least two contrasting thermoset compositions (see col. 4, lines 43-55) a) wherein the geometric patterns are three dimensional and extend inwardly from a surface of the material (see col. 2, lines 5-10) and b) wherein the visual appearance of the geometric patterns appear to vary due to the different cross sections of a geometric shape being exposed on the surface of the material. Regarding **claim 2**, the geometric patterns appear to extend throughout interior portions of the decorative material (see col. 2, lines 5-10). Regarding **claims 4 and 5**, the geometric patterns comprise swirls (see col. 3, lines 40-42). Regarding **claim 6**, note an additional thermoset composition which is not present in the geometric patterns (see col. 4, lines 61-67). Regarding **claim 7**, at least one of the molding compositions comprises an acrylic (see col. 4, lines 16-19). Regarding **claims 8 and 9**, the filler comprises alumina trihydrate (see col. 2, lines 39-41).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claim 3** is rejected under 35 U.S.C. 103(a) as being unpatentable over Barnett (5,820,799) in view of Takahashi et al. (6,428,875).

Barnett discloses a decorative material having geometric patterns on a surface (Fig. 2) thereof the geometric patterns are formed from at least two contrasting thermoset compositions (see col. 4, lines 16-25) a) wherein the geometric patterns are three dimensional and extend inwardly from a surface of the material (see col. 2, lines 5-10) and b) wherein the visual appearance of the geometric patterns vary due to the different cross sections of a geometric shape being exposed on the surface of the material. However, Barnett fails to disclose the geometric patterns comprising stripes. Takahashi et al. teaches it is known in the art to have geometric patterns comprising stripes (see col. 6, lines 40-43) for the purpose of providing a different type of pattern to a decorative material.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have modified the geometric patterns in Barnett with stripes as suggested by Takahashi et al. in order to provide a different type of pattern to a decorative material.

*Response to Arguments*

5. Applicant's arguments filed December 17, 2002 have been fully considered but they are not persuasive. Applicant states that "Turning to the Barnett publication, it is admittedly true that, illustratively, a teaching of formation of swirls is present in the wording "produces the swirls found in cultured marbled materials." Applicant further states that "Barnett stands merely for a multitude of swirls being present, Barnett is not capable of forming different cross sections of the same swirl." In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "forming different cross sections of the same swirl") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant further states " In summary, Barnett discloses the use of two different marble casting resins which "are at least partially incompatible" (see column 1, lines 41 and 42). Barnett does not teach any method which is capable of making an article set forth by the present claims." However, it is to be pointed out that the method was a non-elected invention. The product claims are the only claims being examined. Furthermore, the method of forming the product is not germane to the issue of patentability of the product itself.

*Conclusion*

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catherine Simone whose telephone number is (703) 605-4297. The examiner can normally be reached on 9:30-6:00.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on (703) 308-4251. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Catherine Simone  
Examiner  
Art Unit 1772

February 10, 2003



HAROLD PYON  
SUPERVISORY PATENT EXAMINER  
1772 2/20/03